

REAL ID Act Quarterly Report to the Legislature

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Preface

Pursuant to language contained in the Supplemental Report of the 2007 Budget Act, this REAL ID Act Quarterly Report has been submitted for the quarter ending March 31, 2008:

“The department shall report quarterly beginning September 2007, to the Joint Legislative Budget Committee and the appropriate fiscal and policy committees of the Legislature on the status of the federal REAL ID Act. Specifically, the department shall report on the status of any federal legislation to amend or repeal the act, as well as federal regulations and funding for the program. The department shall also report on its major activities related to the REAL ID act.”

The U.S. Department of Homeland Security (DHS) published the final regulations in the Federal Register on January 29, 2008. In furtherance of California’s review of the final REAL ID regulations, the Department of Motor Vehicles (DMV) continues ongoing discussions with DHS to express its concerns related to the final REAL ID requirements and to seek respective resolution to these issues.

Federal Legislation

ENACTED LEGISLATION

H.R.2764: Lowey (New York)

This legislation proposes appropriations for the federal fiscal year that ends on September 30, 2008. The funds will be directed to the Department of State, foreign operations and associated programs and purposes. The bill also includes \$50 million in grant monies for the REAL ID Act of 2005.

Status

Introduced June 18, 2007, it became Public Law No: 110-61.

PENDING LEGISLATION

S. 563: Collins (Maine)

This bill amends the REAL ID Act of 2005 to extend the deadline by which state driver license/identification (DL/ID) cards must meet certain minimum federal standards for acceptance; and establishes when a state must meet certain minimum electronic verification standards before issuing DL/ID cards due to the non-availability of electronic systems to verify such documents.

If passed, the bill directs the Secretary of Homeland Security (Secretary) to reconvene the negotiated rulemaking committee established pursuant to the 9/11 Commission Implementation Act of 2004, with the addition of any new interested parties, to review the proposed regulations to implement the minimum requirements and the provisions of the REAL ID Act of 2005 and submit recommendations to the Secretary regarding appropriate modifications to such regulations and such Act.

Status

Introduced on February 13, 2007, read twice and referred to the Senate Committee on Homeland Security and Governmental Affairs. No other action to date.

S. 717: Akaka (Hawaii)

This legislation repeals Title II of the REAL ID Act of 2005. In addition, it reinstitutes section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, thereby providing additional regulatory flexibility and funding authorization. Also, this bill allows states to rapidly produce tamper-proof and counterfeit-resistant driver licenses and protect privacy and civil liberties by providing guidance to stakeholders through negotiated rulemaking to achieve improved 21st century licenses that will support national security.

Status

Introduced on February 28, 2007, read twice, and referred to the Senate Committee on the Judiciary. No other action to date.

S. 2356: Coleman (Minnesota)

This legislation amends the REAL ID Act of 2005 by establishing the Prevention of Unsafe Licensing Act. The bill prohibits a state from issuing a driver license/identification card to a person unless the state has complied with certain citizenship or lawful immigration verification requirements.

Status

Introduced on November 14, 2007, read twice, and referred to the Senate Committee on the Judiciary. No other action to date.

S. 2711: Sessions (Alabama)

The Secretary of Homeland Security shall establish the State Records Improvement Grant Program. Under this program, the Secretary may award grants to states that display the intent to advance the purposes of this Act and to issue, or implement plans to issue, driver licenses and identification cards that comply with the State license requirements in accordance with the REAL ID Act of 2005. This legislation currently appropriates \$300 million for each of the fiscal years 2009 through 2013 to carry out the provisions of the bill.

Status

Introduced on March 5, 2008, read twice on March 6, 2008, and placed on Senate Legislative Calendar under General Orders. No other action to date.

S. 2718: Barrasso (Wyoming)

If passed, this bill would withhold 10 percent of the funding for highway construction and maintenance to states that issue driver licenses to individuals without verifying the legal status of those individuals. However, this bill will not affect any State requirements under the REAL ID Act.

Status

Introduced on March 5, 2008, read twice on March 6, 2008, and placed on Senate Legislative Calendar under General Orders. No other action to date.

H.R. 1117: Allen (Maine)

This legislation repeals Title II of the REAL ID Act of 2005. In addition, it reinstitutes section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, thereby providing additional regulatory flexibility and funding authorization. Also, this bill allows states to rapidly produce tamper-proof and counterfeit-resistant driver licenses and protect privacy and civil liberties by providing guidance to stakeholders through negotiated rulemaking to achieve improved 21st century licenses that will support national security.

Status

Introduced on February 16, 2007, the bill was referred to the House Subcommittee on Government Management, Organization and Procurement on March 23, 2007. No other action to date.

H.R.1314: Blackburn (Tennessee)

This bill creates the Photo Identification Security Act, and restricts individual identification documents that may be accepted by the federal government or by financial institutions to: (1) a Social Security card accompanied by a photo identification card issued by the federal or a state government; (2) a driver license or identification card issued by a state that is in compliance with the REAL ID Act of 2005; (3) a passport issued by the United States or a foreign government; and (4) a photo identification card issued by the Secretary of Homeland Security (acting through the Director of the United States Citizenship and Immigration Services).

Status

Introduced March 5, 2007, and referred to the House Subcommittee on Government Management, Organization and Procurement on March 27, 2007. No other action to date.

H.R.1684: Thompson (Massachusetts)

This legislation authorizes grant appropriations of \$120 million for fiscal 2008; \$100 million for fiscal year 2009; and \$80 million for fiscal year 2010, to develop databases, and technology and security plans as required by the REAL ID Act. The bill also sets priorities for awarding grants; prohibits the Secretary from using federal monies designated for any other DHS grant program in order to fund expenses related to the REAL ID Act; and finds that the federal government should set standards for the issuance of birth certificates and sources of identification, such as driver licenses.

Status

Introduced March 26, 2007, referred to Senate Committee on May 11, 2007, read twice; and referred to the Committee on Homeland Security and Governmental Affairs. No other action to date.

H.R.3982: Boswell (Iowa)

This bill would prohibit the hiring, recruitment or referral of unauthorized aliens and conforms to certain documents used to establish the identity of individuals in accordance with the REAL ID Act.

Status

Introduced October 29, 2007, and referred to House Subcommittee on Workforce Protections on January 15, 2008. No other action to date.

H.R.4065: Sensenbrenner (Wisconsin)

This bill creates the Border Enforcement, Employment Verification, and Illegal Immigration Control Act. If passed, it would increase border security and conform to certain elements of the REAL ID Act.

Status

Introduced November 1, 2007, and referred to House Subcommittee on Border, Maritime, and Global Counterterrorism on January 31, 2008. No other action to date.

H.R.4160: Fossella (New York)

If states do not comply with certain requirements for the issuance of DL/IDs, this bill would allow for the withholding of federal funds.

Status

Introduced November 13, 2007, and referred to House Subcommittee on Highways and Transit on November 14, 2007. No other action to date.

H.R.4176: King (New York)

To enhance national security, this bill would restrict the access of illegal aliens to driver licenses and State-issued identification cards.

Status

Introduced March 14, 2007, and referred to House Subcommittee on Highways and Transit on November 15, 2007. No other action to date.

H.R.4192: Tancredo (Colorado)

This bill would amend the REAL ID Act by limiting the maximum period of validity for state licenses and identification documents to five (5) years instead of eight (8) years.

Status

Introduced November 15, 2007, and referred to House Subcommittee on Border, Maritime, and Global Counterterrorism on January 31, 2008. No other action to date.

Federal Regulations

INTRODUCTION

The REAL ID Act was passed by Congress in 2005, as Public Law 109-13, 119 Statute 231, 302, and was codified as Title 49 U.S.C. 30301. The final regulations were published in the Federal Register on January 29, 2008.

The REAL ID Act requires states, effective May 11, 2008, to issue driver licenses and identification (DL/ID) cards using standards established by the Secretary of the Department of Homeland Security (DHS) if those documents are to be used to gain access to federal facilities, board a federally-regulated commercial aircraft, or enter nuclear power plants.

BACKGROUND

Recognizing the significant impact that the REAL ID Act would have on its residents, California's Office of Homeland Security (OHS) and Department of Motor Vehicles (DMV) asked to be included in a working group convened by the United States Department of Homeland Security to assist in developing the regulations for the REAL ID Act. This working group included representatives from the American Association of Motor Vehicle Administrators (AAMVA), several federal agencies, and eleven key states. During a series of meetings in Washington, D.C., beginning in late 2005, the workgroup expressed the importance of addressing five areas of major concern to states:

1. States cannot be expected to bear the significant costs of implementing the REAL ID Act.
2. Deadline for implementation (May 11, 2008) was insufficient to prepare for the significant changes required by the REAL ID Act.
3. Verification of the identity of all cardholders through records kept by various federal and state agencies was dependant on electronic information systems that do not exist.
4. Re-certifying all existing DL/ID cardholders to meet the REAL ID Act standards would be extremely difficult and burdensome for the state and most citizens.
5. Systems established to collect, maintain and share personal data regarding individuals receiving a REAL ID-compliant license or ID card must provide adequate privacy and security safeguards to protect against identity theft and fraud.

On March 9, 2007, DHS released its initial Notice of Proposed Rulemaking (NPRM) to implement the REAL ID Act. On May 7, 2007, California released a 76-page response which acknowledged the consideration given to some of California's issues, but expressed in strong terms that the NPRM failed to address many of the key concerns important to the state.

DHS received over 21,000 comments from various public and private organizations and individuals in response to the NPRM. After considering all of the input, DHS issued the final REAL ID regulations on January 29, 2008. Again, the final regulations addressed some of the concerns raised by respondents; however, most of the major concerns that have been consistently expressed by the working groups throughout the discussion and review process remain unresolved.

The regulations contain specific directives to states in the following areas:

- Minimum identifying information to be displayed on a REAL ID-compliant DL/ID card.
- Types of security features required to be incorporated within each DL/ID card.
- List of documents needed to establish the identity and lawful status of each applicant.
- Standards for maintaining security at locations where DL/ID cards are produced.
- Procedures for states to use when seeking an extension of the implementation deadlines.

COMPLIANCE TIMELINES

The final REAL ID regulations stipulate the following timelines and requirements for all states to meet:

- 05/11/2008 By May 11, 2008, the federal government cannot accept state-issued driver licenses or identification cards (DL/IDs) for official purposes from states that have not been determined to be in compliance unless the state has requested an extension by mid-March. California, as well as all other states, requested and received a compliance extension until December 31, 2009.
- 10/11/2009 States may request a second extension from DHS. If a state requests an additional extension, it must submit a certification that the state has achieved material compliance.
- 12/31/2009 The initial extension terminates as of this date unless the state has requested a second extension by October 11, 2009.

- 05/11/2011 Driver licenses and identification cards will not be accepted from states that are not in full compliance with the provisions of the REAL ID Act. States must begin issuing REAL ID compliant DL/IDs.
- 12/01/2014 Federal agencies cannot accept DL/IDs for official purposes from any individual born after December 1, 1964, unless the issuing state is in compliance with certain provisions. For California, this represents approximately 60 percent of all cardholders.
- 12/01/2017 Federal agencies will not accept DL/IDs for official purposes from any individual born on or before December 1, 1964, unless the issuing state is in compliance with certain provisions. For California, this represents approximately 40 percent of all cardholders.

DETERMINING COMPLIANCE

Material Compliance

In the final rulemaking, DHS established two levels of compliance, as well as the timeframes for each. The first level is material compliance, which must be in place by January 1, 2010, and applies to all first-time applicants. The following represents some of the significant requirements needed to be materially compliant:

- Verify that the applicant is lawfully present in the United States using the Systematic Alien Verification for Entitlements (SAVE) system.
- Verify the validity of the applicant's social security number (SSN) through the Social Security Online Verification (SSOLV) system.
- Confirm the applicant's date of birth, SSN, lawful status, and residential address, using documentation acceptable to the state.
- Establish a process by which persons who are authorized to be in the United States for a specific period are issued a DL/ID card that expires on that specific termination date.
- Incorporate minimum security features in all REAL ID compliant DL/ID cards.
- Conduct fingerprint-based criminal history checks and employment eligibility checks for all employees involved in the licensing process.
- Place a REAL ID compliant symbol, or indicate "not for federal purposes," on the face of each DL/ID card.
- Develop a document containing the state's security plan.

Full Compliance

Full compliance with the REAL ID Act is required by May 11, 2011. To be in full compliance, states must show that a variety of electronic verification systems are in place. Significant full compliance requirements are:

- Establish a system that will retain an electronic image of the document used to establish the person's identity (e.g., birth certificate, passport).
- Verify the authenticity of an applicant's birth certificate or passport.
- Verify whether the person holds a driver license in any other state.
- Re-verify the SSN of current cardholders upon renewal or replacement.
- Re-verify immigration status through SAVE upon renewal or replacement.
- Incorporate a 2D bar code (PDF 417) on all DL/ID cards.
- Receive approval from DHS that the state's final compliance certification package meets all necessary requirements.

California's current DL/ID card system already incorporates some 90 percent of the requirements necessary to be deemed materially compliant with the REAL ID Act for original applicants. There are no states that can claim to be in full compliance with the REAL ID Act because the national databases necessary to complete the required verification procedures do not currently exist. Therefore, while California has made no decision to comply with the REAL ID Act, we are well positioned to meet the material compliance requirements contained in the regulations.

SIGNIFICANT ISSUES

Privacy and Security

California law contains some of the most stringent safeguards to protect the privacy and security of personal information of any state in the union. California has enacted a number of statutes to protect the most vulnerable of our citizens (e.g. victims of domestic violence, stalking victims, peace officers and other occupations where grave bodily harm by violent felons is likely). Given this history, the continued protection of the privacy of individuals and security of vulnerable groups is paramount.

However, the REAL ID Act regulations do not define how personal data will be safeguarded. California is especially concerned that states with much less stringent protections may apply their lower standards in guarding sensitive data relating to our citizens, such as immigration status, SSNs, and residence addresses.

California DMV representatives are participating in a number of working groups that are reviewing every aspect of the systems necessary to support the REAL ID Act. These employees are well versed in both the technical issues involved, as well as the safety and security concerns which must be addressed, if California is to eventually agree to participate in the REAL ID Act. As this work continues, all states should meet minimum threshold requirements to ensure privacy and security of information before any personal data is transmitted between states under the provisions of the REAL ID Act.

FUNDING

California continues to be very concerned with the lack of sufficient federal funds for the REAL ID Act implementation. Based on the language of the REAL ID Act, Section 204 clearly establishes that the Secretary of the Department of Homeland Security (DHS) is authorized to make grants to the states in an effort to assist in the implementation of the minimum standards set forth in the REAL ID Act.

The federal Office of Management and Budget (OMB) estimated the cost of the REAL ID Act to be over \$10 billion; \$4 billion of this amount is attributed to the states. In the 2006 budget year, DHS allocated only \$40 million in grant monies to be awarded to the states. In the 2008 federal budget, DHS was allocated another \$50 million in grant monies for a total of \$90 million. Of this amount, \$10 million was allocated to special projects and the remaining \$80 million is now available to the states through the grant process.

California has determined a preliminary estimate up to \$150 million to become materially compliant under the REAL ID Act regulations. Although California DMV is nearly 90 percent materially compliant, DHS has stated that it is not possible for a state to be materially compliant prior to the enactment of the REAL ID Act in 2005. Therefore, even though every cardholder has previously presented original source documents to California DMV at the time of his or her application and those documents were verified, that cardholder will still have to be recertified. The \$150 million cost estimate does not include costs to connect to the yet to be developed electronic verification systems or the major cost associated with each verification transaction. Once these systems are developed, DMV will be in a better position to estimate the cost. However, using the federal OMB cost estimates for these systems, California's cost of \$150 million would more than double to over \$300 million.

DHS had initially limited available grant funds for the electronic verification systems infrastructure development and proposals that would have multi-state benefits. However, a committee of the National Governors Association has been meeting with DHS Secretary Chertoff and in late March 2008 agreed that the REAL ID grants will be distributed as follows: Approximately \$15 million for the electronic verification systems; the remaining \$65 million would be divided between each state that applied for a grant. Each jurisdiction would receive .5% of the available grant funds with the remainder allocated based on the number of driver license and identification cards issued by the jurisdiction. Further, the Secretary agreed to advocate for \$1 billion in funding with the administration.

DMV developed and submitted on April 4, 2008, a joint grant proposal with the California Department of Public Health (DPH). The grant funds will support a project to enhance DMV's ability to verify an applicant's personal identification data, as well as implement a technology solution that makes California vital events data available to other national motor vehicle agencies.

In addition, funds will be used to implement system enhancements that will protect and secure personal information that meets industry standards and REAL ID requirements; complete the automation of vital events within a shorter timeframe; perform the necessary system development at DMV; work to establish the electronic interface with the DPH database; and to assist in the "data cleansing" effort at DPH to establish the validity and integrity of records.

The total amount being requested in the grant proposal is \$9.7 million, with \$6.2 million directed to DMV and \$3.5 million for DPH. This proposal has been approved by the Department of Finance as a "demonstration" project. Because California has not committed to implement REAL ID, the DMV informed DHS in the grant proposal that (1) submission of the proposal nor (2) acceptance of grant funds does not constitute a commitment from California to implement REAL ID.

There are five national verification systems required by the REAL ID Act. However, only two (legal presence and SSN verification) of the five required electronic verification systems exist today. The remaining three systems for passport verification, birth verification and the all-drivers pointer system still require development. DHS acknowledged in the final regulations that these yet to be developed systems will not be in place by November 2008, and has postponed these verification requirements until the systems are operational. California has communicated to DHS that it must take the lead on developing a clear and comprehensive business plan to identify system standards, security protocols, and the initial and on-going costs for these systems.

Major REAL ID Act Activities

Since release of the final REAL ID regulations on January 11, 2008, California has continued its dialogue with the U.S. Department of Homeland Security to ensure California's interests and concerns are heard. California has continued a proactive role. As California's representative, the DMV has continued to work with other groups (i.e., American Association of Motor Vehicle Administrators (AAMVA), National Governors Association (NGA)) to review the impact of the REAL ID requirements. The following activities occurred between January 1, 2008, and March 31, 2008:

- **Release of the Final REAL ID Regulations - January 11, 2008**
The final regulations were released on January 11, 2008. California was one of six states invited to attend the public release of the regulations and to attend the U.S. Department of Homeland Security's Question and Answer forum. The REAL ID regulations were formally published in the Federal Register on January 29, 2008.
- **Submission of Extension Request - January 11, 2008**
California submitted an extension request to the May 11, 2008, REAL ID Act implementation date. The DMV began conducting a comprehensive analysis to assess the impact of the final REAL ID regulations to California.
- **Extension Request Approval - January 17, 2008**
The DHS approved California's extension request. Approval allows a state to delay implementation of REAL ID until January 1, 2010.
- **AAMVA Meeting in Los Angeles - February 8, 2008**
DMV representatives attended the American Association of Motor Vehicle Administrators Region IV REAL ID Regulation Review Forum in Los Angeles. The meeting provided attendees an opportunity to ask U. S. Department of Homeland Security (DHS) officials questions about the final REAL ID regulations.
- **Letter to US Department of Homeland Security - March 18, 2008**
Letter from George Valverde, Director, DMV, to Michael Chertoff, Secretary of DHS, Washington D.C., clarifying the purpose of California's request for an extension was to provide additional time for further evaluation of the REAL ID Act and emphasizing the need to address outstanding issues of concern.

- **California REAL ID Steering Committee Meeting - March 20, 2008**
The California REAL ID Steering Committee met on March 20, 2008, to review and discuss the final regulations, and the potential impacts to California.
- **California Budget and Fiscal Review , Subcommittee #4**
In anticipation of the upcoming legislative hearing(s) and in response to a request from the Senate Committee on Budget and Fiscal Review, Subcommittee #4 Chair, Senator Michael Machado, DMV has provided a comprehensive assessment of the final REAL ID regulations. The documentation includes the potential impact of the final REAL ID regulations to California and updates information that was previously provided to Senator Machado in 2006.
- **California's REAL ID Grant Application**
DMV developed and submitted a joint grant proposal to the U. S. Department of Homeland Security on April 4, 2008. The proposal represents a united effort between DMV and the California Department of Public Health (DPH) that will enhance DMV's ability to verify an applicant's personal identification data, as well as implement a technology solution that makes California vital events data available to other national motor vehicle agencies.

California's Approach

California has invested heavily over the past several years in technologies and improved procedures designed to make the state's driver license and identification cards amongst the most secure in the nation.

California should continue to evaluate the impact of the REAL ID Act as it relates to implementing best practices for California. If these practices represent sound business investments, they should be pursued regardless of the REAL ID Act. These efforts are ongoing, as evidenced by the new DL/ID card contract which goes into effect in 2009, that will utilize biometric authentication systems.

California should continue its dialog with the U.S. Department of Homeland Security and continue to press on the issues of federal funding, privacy and security, and electronic verification systems development, as part of its deliberations on whether to implement the REAL ID Act in this state.

California should continue to advocate its demand that all states reach a common level of program readiness from a technical, privacy, and security standpoint, before dedicating a major portion of available resources for development of the national verification data systems.

California has demonstrated a history of implementing provisions within its systems and processes that provide for the highest level of security and protection of our drivers. Many of these are consistent with the intent of the REAL ID Act, and California should continue to pursue the highest level of privacy and security of our driver license and identification cards.

Appendices

1. Analysis of the Regulations to the Legislature – dated April 10, 2008
2. Letter – sent to the U.S. Department of Homeland Security, Secretary Michael Chertoff, dated March 18, 2008

Appendix 1

Analysis of the Regulations

The Department of Motor Vehicles (DMV) has performed a review of the final rules for the REAL ID Act, Docket number DHS-2006-0030, Minimum Standards for Drivers' Licenses and Identification (DL/ID) Cards acceptable by Federal Agencies for Official Purposes. The REAL ID Act creates new policies and processes which will require extensive training for DMV employees and will increase the processing time for all DL/ID card applications. Implementation of the REAL ID Act requires legislative action and either appropriations through the budget cycle or cost recovery from cardholders. The following comments represent the issues surrounding the final rules and their impact on California DMV and all California cardholders:

Compliance Checklist

The Department of Homeland Security (DHS) has developed a compliance checklist that will allow DHS to assess and track the states relative to becoming compliant with the REAL ID Act. Two separate checklists have been developed by DHS:

- *Material Compliance* – States must become materially compliant no later than January 1, 2010, if the state has been provided an extension by DHS. This means that all first-time applicants will be issued materially compliant DL/ID cards
- *Full Compliance* – States must become fully compliant no later than May 10, 2011, if the state is materially compliant and has been provided an extension by DHS.

Analysis: California would be required to implement the provisions of the material compliance checklist no later than January 1, 2010. There are 18 specific items on the material compliance checklist that require states to implement before being considered materially compliant. Currently, California has in place or will have in place many of the requirements identified in the final regulations. An additional 21 items are provided on the full compliance checklist that states must meet in order to be considered fully compliant to the REAL ID Act. California must meet the requirements of full compliance no later than May 10, 2011, provided an extension was granted by October 11, 2009. The items of the checklist are discussed further in this section. DHS' approach of developing a material and full compliance checklist provides the states with an opportunity to prioritize the changes that will lead to greater overall compliance.

State Requirements

1. *Imaging of Identity/Lawful Status Documents* – Documentation presented by the applicant for purposes of identity and/or lawful status must be digitally imaged and stored for a minimum of 10 years. If the documents are not digitally imaged, hard copies must be retained for a period of seven years.

Analysis: Identity/lawful status documents are considered the source documents received from applicants and are not imaged or retained for any period of time. DMV anticipates a new DL/ID Card contract in 2009, which includes provisions for the technology to image the documents for long term retention. The department supports this requirement as it establishes a good business practice by retaining the image of the document that was used to establish the identity of the applicant. Retaining an image of the source document will provide the department with additional information and audit tracking when investigating fraud cases. The regulations do provide allowance for only the control number from the source document to be collected if State law prohibits the retention of the image. Current California law allows the department the authority to retain the scanned image; however, the department may want to seek legislation to control access to the source document.

2. *Limited Term for Legal Presence* – The REAL ID Act establishes that if an applicant presents a non-permanent, DHS-issued immigration document, the applicant's REAL ID card must expire on the same day as the DHS-issued immigration document. If the DHS document does not contain an expiration date, the REAL ID must expire within a period of no longer than one year.

Analysis: Currently, when an original applicant presents a non-permanent, DHS-issued immigration document as part of the DL/ID card application, the issued DL/ID card must contain an expiration date that coincides with the DHS-issued document. Establishing a limited term for legal presence requirement for all applicants who present a non-permanent, DHS-issued immigration document helps to ensure that the applicant's DL/ID card is only valid during the period of approved stay in the United States and assists in discouraging applicants from overstaying the approved stay. DMV will be required to modify programs and require *all* applicants with a non-permanent, DHS-issued immigration document to possess a DL/ID card where the expiration coincides with the DHS-issued document or, if no date is stated, a card that expires within one year. Previously only original applicants were handled in this manner, which will now include renewals.

3. *Only One REAL ID Card May be Held* – An applicant may hold only one REAL ID card at any time.

Analysis: California law allows individuals to possess both a driver license and an identification card at the same time. Approximately 2.4 million individuals have both a driver license and identification card. California law also establishes that an applicant may only hold one valid DL from any jurisdiction at one time. The regulations will require an amendment to California law to ensure that an applicant can hold only one REAL ID card (driver license or identification), regardless to state of issuance, at any given time. The regulations do allow for states to issue an individual with a REAL ID card (DL) and a non-REAL ID card (ID). This could be confusing for the individual as well as the accepting entity that is verifying the card for identity, whether it is for official federal purposes or being accepted at a retail store or bar.

4. *Re-Issuance of REAL ID Cards* – At any time after the initial REAL ID card issuance, if a card is re-issued, the Social Security Number (SSN) and the lawful status of the applicant must be re-verified through the use of the Social Security Online Verification (SSOLV) and Systematic Alien Verification for Entitlements (SAVE) electronic verification systems, respectively.

Analysis: Currently, the department does not re-verify previously verified SSNs or legal presence documents at card renewal or reissuance. DMV programming must be developed that re-verifies the SSN and the lawful status document at every card reissuance. Re-verification of the SSN will assist DMV's in reducing the number of cases where identity theft may occur after the death of the cardholder. However, with the DHS proposing to increase their SAVE electronic verification fees, a cost/benefit analysis should be conducted on any business value resulting from re-verification.

Customer Requirements

1. *Customer Impact* – Although most of the regulations will impact the California citizen either directly or indirectly, the regulations are restrictive in requiring the applicant to appear in person and provide specific documentation. In order to meet the requirements of the REAL ID Act, many existing cardholders will have to expend time and money to gather and present the necessary identity documentation required by the REAL ID Act. In some cases, the applicants may not be able to provide the documents required by the REAL ID Act.
 - **Proof of Identity/Lawful Status for Material and Full Compliance** –
 - Applicants must present one of eight documents to establish identity and lawful status. These acceptable documents are a U.S. Passport, U.S. Birth Certificate, Consular Report of Birth Abroad, a Permanent Resident Alien Card, and Employment Authorization Document, a foreign passport with a valid visa and an I-94 document, a Certificate of Naturalization, or a Certificate of Citizenship.
 - States may choose to accept additional documents for proof of identity. If a state chooses to exercise this option, the exception process must be documented and the information on any additional documents accepted must be listed in the certification package to DHS.
 - **Proof of Social Security Number (SSN) is needed for Material and Full Compliance**
 - Applicants will be required to present an SSN card, or a W-2 form, or a paystub with the SSN listed, or an SSA-1099 form.
 - **Proof of Residence Address is needed for Material and Full Compliance**
 - An applicant will be required to present two documents to establish their residence address. The state may determine the types of documents that will be acceptable under this requirement.

Analysis: California currently requires that original applicants for a DL/ID card provide proof of identity and legal presence; as such, the documents specified in the REAL ID Act are already accepted. California also accepts other documents not specified by the REAL ID Act. A decision must be made on the types of documents, if any, the department will continue to accept under the exception process. An analysis should be done on the reliability and integrity of any additional documents that would be considered for exception processing.

For purposes of proof of SSN, applicants for commercial driver licenses are required to present actual documentation containing the SSN; non-commercial applicants are only required to disclose their SSN on the application. California must require that all applicants provide an acceptable document to prove the SSN. Since the department electronically verifies the SSN with the Social Security Administration, having the applicant present actual documentation of the SSN seems excessive and only increases the types of documents the field office employee must visually inspect.

Currently no proof of residence address is required by DMV, except for commercial drivers who must be a California resident in order to receive a California commercial driver license. The applicant is only required to write in the address on the application form. The regulations require applicants provide two documents for proof of residence address.

A determination must be made on the types of documents that will be acceptable as proof. Without an electronic means to verify the residence address, having the applicant demonstrate proof as suggested in the regulations does not provide much value. Introducing more documents for field office employees to verify will introduce more risk in accepting fraudulent documents. Even the most diligent and trained employees should not be expected to verify literally thousands of different documents and inspect them for authenticity and validity.

2. *Age-Based Re-certification Timelines for Full Compliance –*

- On or after December 1, 2014, federal agencies cannot accept a state issued DL/ID card, unless it meets the requirements of the REAL ID Act, for an “official federal purpose,” as defined in the REAL ID Act, from individuals born after December 1, 1964.
- On or after December 1, 2017, federal agencies cannot accept a state issued DL/ID card, unless it meets the requirements of the REAL ID Act, for an “official federal purpose,” as defined in the REAL ID Act, from individuals born on or before December 1, 1964.

Analysis: DHS took a risk-based approach in allowing the states to defer enrollment of the proportion of the population that statistically represents a lower risk for obtaining false or fraudulent identification. According to DHS, only three percent of identification fraud is committed by someone older than 50 years of age. Further, as an extension period from May 11, 2008, to January 10, 2010, is provided in the regulation, the longer enrollment period benefits California as well as other states by

reducing the cost incurred by having to bring a customer in for a REAL ID compliant license prior to their normal renewal cycle when they are required to come into a field office. A driver in California with a good driving record only has to appear every 15 years for an in-person renewal. The ten-year time period for REAL ID compliance will still require a third of our cardholders (up to 8 million) to come into a field office with their identity documents and proof of address, who would otherwise renew their licenses by mail or Internet. This additional visit to the office would take approximately 7.5 minutes per transaction for an additional up to 8 million customers over eight years, or 500,000 to 1 million applicants per year.

National Database Systems Requirements

National Database Systems – The development of a national DL/ID verification system is required to achieve full compliance of the final REAL ID regulations. This system would be used to ensure the applicant has terminated, or is terminating, the DL/ID card issued by another state prior to the issuance of a new DL/ID card.

Analysis: The regulations fail to fully address the cost, logistical burdens, privacy and security issues that exist with the development of the national verification systems. To date the total cost of these systems has not been identified nor who will fund and be responsible for the oversight and administration. In addition to the substantial up-front costs, there will be significant ongoing expenses for charges for the use of the systems.

DHS has proposed that states work with the American Association of Motor Vehicle Administrators (AAMVA) to receive the \$80 million available in grant money to develop the required verification systems. However, this funding is only a small portion needed in order to develop the infrastructures and does not address any ongoing costs to the states. DHS said that the states could join in the organization of a governance structure in conjunction with AAMVA to address issues such as funding, systems development, privacy and security standards, and transaction fees to access data.

Since the final rules do not specify the actual requirements for security and privacy standards, there is no guarantee that all states will meet the California standards, as California has some of the most stringent privacy and information security protections in the United States. Because the REAL ID Act requires states to share sensitive personal identifiable information, states with weaker security protections would make other states' systems vulnerable to unauthorized access, disclosure, or modifications. As the REAL ID Act requires state motor vehicle agencies to collect, store, and exchange personal identifiable information beyond current practices, it is imperative that sufficient privacy and security requirements are delineated for all complying states to meet. If the goal of the REAL ID Act is to establish baseline standards for the issuance of DL/ID cards, then alternatively, this effort should include baseline requirements for the protection of information on the cardholders it seeks to certify. Several aspects of the electronic verification systems are still in question. As three of the five systems do not exist today, it is unknown what requirements to protect the privacy and security of the information will be put into place. Again, the final rules do not sufficiently address the development

of these databases or the responsibility requirements if any system becomes compromised.

Neither the REAL ID Act nor the final rules define the standards of governance for this exchange of information. Due to the lack of specific requirements in the REAL ID Act and in the final rules to protect all personal identifiable information, California must continue to influence the development of any systems used to exchange information to protect the California cardholder whose information would be at risk. For further discussion, see Electronic Verification Systems listed in this section.

1. *Systematic Alien Verification for Entitlements (SAVE)* – The use of the SAVE database for the verification of DHS-issued immigration documents is required by both the REAL ID Act and associated regulations.

Analysis: REAL ID requires states to issue compliant cards to only those applicants that are lawfully present in the United States. This assists national security by only allowing lawfully present persons to have a federally recognized identity document. The SAVE system uses information contained on the immigration document to verify the authenticity of the data collected by the department to ensure the legal status of the applicants. Although California has been utilizing the SAVE system since 1995, REAL ID will require inquiring the system for both original and renewal applications. The system costs approximately \$0.26 per initial inquiry and \$0.48 per secondary inquiry. Based on current information from the Department of Homeland Security, SAVE Program, the fees will double for initial inquiries.

2. Use of the Social Security Online Verification (SSOLV) system – The use of the SSOLV system for the verification of Social Security Numbers is required by both the REAL ID Act and the associated regulations.

Analysis: California began performing on-line, real time verifications of SSNs in January 2002. This process allows technicians to verify the information while the applicant is in the office and helps to resolve issues with the verification of the SSN. Between January 2002 and December of 2005 all active records on the department's database had a verified SSN.

This system is currently operational and is maintained by the United States Social Security Administration and provides on-line SSN verification of information submitted by a state. California is assessed a fee of \$.32 per inquiry, and there is no indication that fee will increase after REAL ID implementation.

Based on the final regulations, California will now be required to re-verify an applicant's SSN at each card issuance. This will create additional costs for the state based solely on the impact of the REAL ID Act and the associated regulations.

3. *U.S. Passport Electronic Verification* – Use of the United States Department of State database for the verification of U.S. Passports is required.

Analysis: No system exists today to verify United States issued passports. The information related to passports is maintained on a Department of State (DoS) Database. DHS is in negotiations with the DoS to put information into the SAVE database related to the United States passports so that the authenticity of the data can be certified through existing systems. Based on the recent discussions, the passport data may be available for use through the SAVE system within the year and will cost the same as any other verification performed through SAVE.

In 1994, when California passed laws to require acceptable proof of identity and legal presence, a United States Passport was deemed an acceptable document. Original applicants that present United States Passports for proof of identity and legal presence represent approximately 10 percent of the total number of original applications. According to DHS, as of 2008, 30 percent of U.S. citizens have a valid passport and the number of citizens requesting this document continues to increase.

4. *Electronic verification of Birth Certificate Information* – Use of the Electronic Verification of Vital Events Records (EVVER) system for the verification of U.S. Birth Documents.

Analysis: No national system exists today; as such, California does not currently electronically verify birth certification information. In the regulations, full compliance requires that states use the system when available. California should continue to participate in working groups to help influence the development of the system in a manner consistent with the needs of the state. Using all available electronic verification systems would allow the states access to verify the most relevant identity and/or legal presence information ensuring that the information provided by the applicant is as accurate as possible. This issue is further discussed under the significant issue section.

5. *National Pointer System* – Use of a National Pointer System to identify all cardholders at the time of application.

Analysis: No national system exists today; as such, California does not currently use a National Pointer System. In the regulations, full compliance requires that states use the system when available. California should continue to participate in working groups to help influence the development of the system in a manner consistent with the needs of the state. Using all available electronic verification systems would allow the states access to verify the most relevant identity and/or legal presence information ensuring that the information provided by the applicant is as accurate as possible. This issue is further discussed under the significant issue section.

Driver License Card Requirements

1. *DL/ID Card Requirement* –
 - The state-issued REAL ID card must contain a level 1 (overt), a level 2 (covert), and a level 3 (forensic) security feature.

- The card must include adequate features to detect forgery/counterfeiting and provide an adequate level of confidence, and facilitate detection of fraudulent cards.

Analysis: California currently issues DL/ID cards with at least one of each of the levels of security features required by the regulations. DMV anticipates a new DL/ID Card contract in 2009. The department is supportive of identifying minimum card security specifications for all states to discourage shopping between multiple DMV's to establish fraudulent identities. Additionally, the regulations allow states with an opportunity to exceed the minimum specifications. California intends on exceeding the minimum established specifications that will establish California as a leader in DL/ID card technology with the issuance of a state-of-the-art DL/ID card.

2. *Machine Readable Technology, PDF-417 (2D Bar code)* – The card must include a 2D bar code as part of the Machine Readable Technology.

Analysis: California utilizes a magnetic stripe on all DL/ID cards to satisfy the use of machine readable technology. Machine readable technology is a proven, effective and accurate method of storing minimal information that can be used in such instances as age verification or automated citations. DMV anticipates a new DL/ID card contract in 2009, having both the magnetic stripe and 2D bar code. By having two types of machine readable technology on the DL/ID card, it allows industry to utilize either magnetic stripe or 2D bar code technology.

3. *DHS Approved Security Marking* – The card shall bear a DHS-approved security marking.

Analysis: Until DHS provides the specifics of the security marking, California is unable to comply. DMV anticipates a new DL/ID Card contract in 2009, and may require a modification to the contract at a later date to meet this requirement. Additional, analysis may be necessary to assess the cost/benefit value of the security marking, the strategic location of the marking on the DL/ID card, the level of security the marking will provide, and the efficiency and effectiveness of the security marking against any existing card security features.

4. *Security Processes for Card Production and Departmental Employees* – The state must have a security plan that addresses the physical security of the facilities, protection of information, privacy policies, release of information, access control, card security, training requirements, security awareness, emergency/incidence response, internal audit controls, and an affirmation that the state possess the authority and the means to protect the REAL ID card information. The security plan must be included as part of the state's certification package to DHS.

Analysis: California has many of these requirements in place but does not have one comprehensive document that meets the requirements set in the regulations.

California will be required to prepare a security plan that meets the requirements of the regulations and the plan must be supplied to DHS with the compliance package.

As California laws are some of the most stringent in the country as related to the collection, maintenance, and release of personal identifying information, California must continue to influence DHS in the area of privacy and security of personal identifying information. The regulations are vague at best and do not ensure a high level of privacy and security for all states.

5. *Employee Background Checks* – The REAL ID Act and associated regulations require that all employees that can impact the information on the card or who produce or manufacture the card be subject to a background history check that consists of a fingerprint and name-based, state and federal criminal background check. Criminal offenses that appear on the background check must be reviewed, and any felonies set forth in 49 CFR 1572.103(a) are disqualifying.

Analysis: California state employees hired to positions of trust at DMV are required to submit to background checks. California DMV has been utilizing the LiveScan automated fingerprint and name-based state and criminal history checks since 2002. DMV must ensure that all existing background check provisions meet the requirements of the REAL ID Act. Based on the regulations we anticipate that all existing employees in covered positions will be required to re-submit to a background check if the last check was performed prior to 2002. Also, a review of the currently disqualifying offense must be performed to ensure that the felony disqualifications set forth by the regulations are consistent with our current practice. California law currently prohibits the re-processing of background checks on existing employees. This will be an issue that requires new legislation and development of union contracts.

The DL/ID card production vendor subjects all of their employees to a background check that meets and exceeds those provisions set for state employees. The background check requirements established in the REAL ID Act and regulations have been incorporated into the provisions in the new DL/ID Card contract.

Appendix 2

Letter to U.S. Department of Homeland Security, Secretary Michael Chertoff,
dated March 18, 2008.

OFFICE OF THE DIRECTOR
DEPARTMENT OF MOTOR VEHICLES
P.O. BOX 932328
SACRAMENTO, CA 94232-3280



March 18, 2008

The Honorable Michael Chertoff
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Chertoff:

I would like to thank you and your staff for the open dialogue we have maintained regarding the REAL ID Act and corresponding regulations. I appreciate that the Department of Homeland Security (DHS) has recognized the significant impact this program will have on California Department of Motor Vehicles (DMV) operations.

California, along with forty-five other states, requested an extension of the initial implementation date, which clearly highlights the complexities of the unresolved issues. While we acknowledge that a workable REAL ID program may create positive results, a significant number of outstanding issues need to be addressed before we can make any kind of recommendation to our Administration regarding implementation of REAL ID in California. California's request for an extension is not a commitment to implement REAL ID, rather it will allow us to fully evaluate the impact of the final regulations and precede with necessary policy deliberations prior to a final decision on compliance.

The final regulations for the REAL ID Act were discussed at the National Governors Association (NGA) conference in February. It is our understanding that the NGA identified many of the same issues previously expressed by California and other motor vehicle agencies. Specifically, the NGA shares our concerns over: the absence of adequate federal funding; the lack of specificity regarding how to protect and secure personal information; and the design and support of required electronic verification systems that are critical to the program.

Establishing a minimum threshold of standards for all states is important. For example, assessing the existing capabilities such as digitization of information, privacy and protection of personal information, and the ability to verify the authenticity of identity documents is essential because these capabilities vary widely between jurisdictions. Until minimum standards are in place, the REAL ID licensing system envisioned by Congress cannot be achieved. We continue to strongly urge that currently available federal funding be used to help states establish minimum standards.

March 18, 2008

It is also important that DHS begin now to develop a clear and comprehensive business plan for the e-verification systems that will drive REAL ID. Before states can dedicate staff and resources for implementation, the DHS must identify system standards, security protocols, and anticipated initial and on-going costs for e-verification systems. While the states could provide input towards the development of that plan, it is imperative that the DHS take ownership of the final product.

We would very much appreciate the opportunity to discuss these and other related issues with you as the program moves forward. If you have any questions or require additional clarification on any of the subjects addressed in this letter, please contact me at your convenience at (916) 657-6941.

Sincerely,

GEORGE VALVERDE
Director

c: Dale E. Bonner, Secretary
Business, Transportation and Housing Agency

Matthew Bettenhausen, Director
Governor's Office of Homeland Security